

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

STEPHEN S. McINTOSH,

Petitioner,

vs

WARDEN McDONNELL, et al.,

Respondent(s).

CIVIL ACTION NO. 00-J-2700-NE

FILED
01 OCT 12 AM 8:01
U.S. DISTRICT COURT
N.D. OF ALABAMA
ENTERED
OCT 12 2001
asl

MEMORANDUM OF OPINION

The court has considered the entire file in this action together with the Magistrate Judge's Report and Recommendation and has reached an independent conclusion that the Magistrate Judge's Report and Recommendation is due to be adopted and approved. The court hereby adopts and approves the findings and recommendation of the magistrate judge as the findings and conclusions of the court.¹

¹ With the exception that the quotation on page 4 is found in the *Alabama Rules of Appellate Procedure* 39(a)(1), and reads as follows:

(a) **Considerations Governing Certiorari Review; Grounds.** Certiorari review is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons for the issuance of the writ.

(1) *Civil Cases and Non-Death-Penalty Criminal Cases.* In all civil cases and in all criminal cases other than cases in which the death penalty is imposed, petitions for writs of certiorari will be considered only:

(A) From decisions initially holding valid or invalid a city ordinance, a state statute, or a federal statute or treaty, or initially construing a controlling provision of the Alabama Constitution of the United States Constitution;

In accord with the recommendation, this petition for writ of habeas corpus is due to be dismissed. An appropriate order will be entered.

DONE, this 11 day of October, 2001.



INGE P. JOHNSON,
UNITED STATES DISTRICT JUDGE

(B) From decisions that affect a class of constitutional, state, or county officers;

(C) From decisions where a material question requiring decision is one of first impression in Alabama;

(D) From decisions in conflict with prior decisions of the Supreme Court of the United States, the Supreme Court of Alabama, the Alabama Court of Criminal Appeals, or the Alabama Court of Civil Appeals; provided that:

1. When (a)(1)(D) is the basis of the petition, the petition must quote that part of the opinion of the court of appeals and that part of the prior decision the petitioner alleges are in conflict; or

2. Where it is not feasible to quote that part of the opinion either because no wording in the opinion was issued, the petition shall state specifically and with particularity how the decisions conflicts with a prior decisions; and,

(E) Where the petitioner seeks to have overruled controlling Alabama Supreme Court cases that were followed in the decision of the court of appeals.